

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KIEWIT CONSTRUCTORS, INC.,

Plaintiff,

v.

ORDER
07-CV-121A

FRANBILT, INC.,
MICHAEL BURNS,
THOMAS BARNES, and
FIRST NIAGARA BANK,

Defendants.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On July 13, 2007, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that defendant First Niagara Bank's motion to dismiss the complaint for failure to state a cause of action be denied to the extent that it seeks dismissal of the complaint.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant First Niagara's motion is denied to the extent that it seeks dismissal of the complaint for failure to state a cause of action.

This case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: August 24, 2007